IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3843 OF 2007
IN
L.E.& C.SUIT NO.4/4/1996

1. Smt. Shamsher Kaur, aged 43 yrs. widow of Shri Gurudev Singh

2. Shri Sukhvinder Singh, aged 27 Years, S/o. Gurudev Singh

3. Kum. Balbinder Kaur, aged 20 years, D/o. Gurudev Singh.

All Indian inhabitant, residing at Flat No.A-1,Shakti Apt., Co-op.Hsg. Society Ltd., Chakala Rd., Andheri (E), Mumbai - 400 099

.. Petitioners.

V/s.

1. Dr. Dharampal Murlidhar Dhawan, Aged 57 yrs.,Occ.Profession.

2. Smt. Madhu Dharampal Dhawan, Aged 51 yrs. Occ.Housewife.
Indian Inhabitants of Mumbai, residing at Gujarati Society, H-99 Nehru Road, Vile-Parle (E),Mumbai-57.

.. Respondents.

Mr. S.M.Shetty for the petitioners.

Mr. A.S.Khandeparkar with Datta H. Pawar for the Respondents.

CORAM : S. A. BOBDE, J.

DATED : 29th SEPTEMBER, 2007.

ORAL JUDGMENT . :-

. By this petition, the petitioners have

challenged the order striking out the petitioners defence for non-compliance of the order of this court. Having heard the parties, it is clear that the relevant facts appeared to be beyond dispute. This court had clearly directed the petitioners to deposit arrears of compensation vide clause (b). In addition this court had directed the petitioners to deposit arrears of the society maintenance charges vide clause (c). The amounts were to be deposited on or before 31st December, 2003. Admittedly, the petitioners did not deposit the arrears of society maintenance charges within the stipulated time but deposited the said charges some time in September, 2005. The learned counsel for the petitioners submitted that the defence of the petitioners ought not to have been struck out because the society had granted instalments and therefore, the petitioners could not be said to have failed to comply with the order of this court. It makes no difference that the society allowed payments to be made by instalments. The petitioners' defence has been struck out for not complying with the order of this court. It is important to note that the petitioners did not, at any stage, approach this court for modification of the order either by way of extension of time. Thus there is no merit in the petition. The trial court has acted in accordance with law and the order does not suffer from

any error of law apparent on the face of the record. This petition is, therefore, liable to be dismissed and is hereby dismissed.

. At this stage, the learned counsel for the petitioners prays for stay of this order. The application for stay is hereby rejected.

(S.A.BOBDE,J.)

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